

Testimony, April 6, 2009

Mark Fix

In opposition to HB 575

Mr. Chairman, members of the committee. I would urge you to vote against HB 575.

Northern Plains has commissioned Tom Myers for a hydrologic study of coal bed methane (CBM) development in Montana. Dr. Myers' peer reviewed study indicates that river flows will be affected by the CBM withdrawal. Dr. Myers' report also shows that hundreds of wells will be affected and it may take from 50 to 200 years for the aquifers to recover. This bill will allow the continued depletion of groundwater in southeast Montana. It will not protect senior water right holders.

Northern Plains Resource Council and the Tongue River Water Users' (TRWU) filed an objection to Fidelity Exploration and Production Company's (FEPCO) water rights applications a few years ago. FEPCO, a CBM developer applied for a water right to market 3,000 acre feet of water out-of-state to Wyoming and 3,800 acre feet of water to market in Big Horn County, Montana. Thanks to legislation promoted by Senator Bales (R-Otter) and passed in a previous legislature, the water was not treated as the groundwater it is. The water was now called "produced" water and treated as though it had originated in the pipe. Consequently, nearby senior water rights holders could not object to these water rights applications because there were no senior water right holders in FEPCO's private pipeline. During the Department of Natural Resources and Conservation (DNRC) hearing I testified and noted that I thought this was ridiculous. I said that I have a pipe that goes from the river to my circle pivot and if I were treated the same way, I could continue to draw water from the river indefinitely because I am the senior water right holder on my pipeline.

The DNRC hearings examiner for the applications ruled that FEPCO could not have a water right for the water to be marketed out-of-state, but that the company could have a water right to market the water in Big Horn County. Northern Plains and TRWU filed a lawsuit in District Court because we believe the CBM wastewater is groundwater. Judge Thomas Honzel ruled in our favor last December—CBM water is groundwater—and the applications were remanded back to the DNRC hearings examiner. If FEPCO reapplies for a water right, the water should be treated as groundwater and senior water rights holders can object. So far, FEPCO has not done this nor have they or the DNRC appealed the case to the Montana Supreme Court. Instead, the company has chosen to go through the back door again by having Senator Bales and Representative McChesney sponsor bills at the legislature to now declare that CBM water is surface water.

Northern Plains and TRWU believe that Montana's groundwater and surface waters are held in public trust by the state and must be used sparingly and beneficially. Ranchers and others who need the water should be able to get it—by going through the same application process everyone else does. To give water to an out-of-state developer (FEPCO) is of great concern to us. The coal

bed methane companies are mineral lease holders, and while that gives the companies certain rights over surface owners, we do not believe that includes rights to massive quantities of water. We feel that the methane should be developed in place without the groundwater being withdrawn or else the water should be reinjected to augment the aquifers that are being depleted.

Representative McChesney cannot make the assumption that the methane developers have the right to pump unlimited quantities of groundwater (no matter what it is called) when there are senior water rights holders affected. Senior water rights are administered by the Water Division of the DNRC. The law that declared that the Board of Oil and Gas Conservation (BOGC) has prior jurisdiction over the water was not passed until the 1960s. At that time there was only conventional oil and gas production, which impacted very little groundwater (and this water was of poor quality and not generally used by anyone). The production of CBM, on the other hand, requires the pumping of massive amounts of water from aquifers that are used by many in the region, most with senior water rights. Judge Honzel ruled that the BOGC has prior jurisdiction, but not exclusive jurisdiction over the water. Senior water rights must not be tossed aside to develop CBM.

Northern Plains has never opposed coal bed methane development—as long as it is done responsibly and in a manner that does not irreparably harm Montana's other resources, especially our water, and our other important economies, in particular, agriculture.

Sincerely,

Mark Fix

Rancher, Irrigator, Senior Water Right Holder and Past Chair of the Northern Plains Resource Council

Excerpt from Jeanie Alderson's email concerning HB 575, which has a hearing in Sen. Natural Resources on April 6.

On some levels this is really complicated and one level it is very simple. Water rights are a huge part of the equity we have in our ranches. When we lose a priority date we lose our water right. The equity people have in their ranches all over the basin is what we are talking about. It is really a property rights issue.

When wells and springs go dry from cbm development the company may drill a new well (proving that they caused the well to go is another issues) – but in most cases these new wells will be in deeper seams – when a well is drilled in a different seam a new priority date is given.

It is really hard to fathom the amount of water we are talking about. When FEPCO first started they were drilling into two seams. They now have the technology to drill into every seam – every formation . SO really, any one in the Powder River Basin who has a coal seam well or spring is threatened by not only losing water but with this bill, losing the RIGHT to that water.

The precedent of an out of state company controlling this much water is really dangerous for all of us in Montana.

I think industry has made it seem like they can not produce without controlling all this water. They have options and CBM development in MT would be much more sustainable and less devastating if they would take those options – As I think I have said before, it doesn't have to be a choice for one industry (agriculture) or another (CBM). With care we can have both –

Jeanie Alderson  
Bones Brothers Ranch  
Birney, Montana

## **Testimony in Opposition to HB 575**

**My name is Carolyn Walker. I currently live in Missoula Montana. I grew up in Big Horn, Wyoming and lived for 20 years on a ranch outside of Birney, Montana. The area where Coal Bed Methane is currently being developed is very familiar and dear to me. I urge the members of this committee to oppose HB 575.**

**Proponents of HB 575 have misrepresented the nature of this bill. HB 575 configures a new definition of a water right. Why should a rancher have to go to the CBM industry and get a contract (read 'purchase') for what he or she may already have a long established right to? That right, which in many cases, was filed on at or before the turn of the 20<sup>th</sup> century.**

**Everyone in Montana should be disturbed by this bill. This bill creates the privatization of water. This is the most serious flaw in HB 575. Now the water is shared by the original "first in time, first in right" system which is a system that has worked for well over 140 years; still, NO ONE owns the water.**

**The privatization of water is happening over the globe. Until now those who owned the petroleum, or controlled it, were the ones with power. Next it will be fresh water. One of the most dangerous things about T Boone Pickens is his ownership of vast amounts of water in this country. That old gent was smart enough years ago to make a fortune with oil. He has seen the next big market corner and it isn't wind; it is water.**

**This little bill by Representative McChesney forwards the notion that water can be privately owned. In Southeastern Montana the privatization of water will be the death of ranching, wildlife, and human use. CBM wells deplete entire aquifers. My grandchildren are the 5th generation of one family to live on, and to ranch sustainably in the Tongue River region. They should not be forced off the land.**

**Please do not promote this travesty. Vote against HB 575.**

**Sincerely,  
Carolyn Walker  
Missoula**